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NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

MEDIMMUNE, LLC,

No. C08-05590 JF (HRL)

Plaintiff,

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION FOR PROTECTIVE ORDER**

v.
PDL BIOPHARMA, INC.

[Re: Docket No. 311]

Defendant.

Plaintiff MedImmune, LLC (“MedImmune”) seeks a declaration of contractual rights re a 1997 agreement (“License Agreement”) with defendant PDL Biopharma, Inc. (“PDL”), as well as a declaration of noninfringement and invalidity as to claim 28 of PDL’s U.S. Patent No. 6,180,370 (the “370 patent”). PDL asserts counterclaims for breach of contract and willful infringement.

MedImmune moves for a protective order as to eight of thirty-six noticed Fed. R. Civ. P. 30(b)(6) deposition topics. PDL opposes the motion. Upon consideration of the moving and responding papers, as well as the arguments of counsel, this court grants the motion in part and denies it in part as follows:

A. Topic 15 seeks testimony about MedImmune’s relationship with Abbott Laboratories (“Abbott”) re the sale of Synagis, including MedImmune’s accounting for Abbott’s sales and payment of royalties. The parties disagree whether this discovery relates to issues that have

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1 been in the case from the start. However, there is now no dispute that these requests seek
2 discovery on matters that are in the case, albeit plaintiff argues that the topic is overbroad. As
3 noted in this court's order on PDL's motion to compel documents (Docket No. 518),
4 MedImmune has agreed to produce certain documents pertaining to its relationship with Abbott.
5 And, at oral argument, MedImmune stated that it does not seek an order limiting the scope of
6 possible inquiry on this topic and instead suggested that the parties further meet-and-confer as
7 to the scope of PDL's examination. Accordingly, MedImmune's motion as to this topic is
8 denied as moot, without prejudice to renew the matter should the parties fail to agree on the
9 proper scope of examination. As discussed at the motion hearing, this court trusts that the
10 parties should be able to work that out for themselves.

11 B. Topic 27 seeks testimony as to the date on which MedImmune first believed that claim
12 28 of the '370 patent was either invalid or not infringed and identity of the person(s) at
13 MedImmune who made that determination. MedImmune's motion as to this topic is granted.
14 PDL has not convinced that the topic is relevant or reasonably calculated to lead to the
15 discovery of admissible evidence. FED. R. CIV. P. 26(b)(1).

16 C. Topic 28 having been withdrawn by PDL at the motion hearing, MedImmune's motion
17 as to this topic is denied as moot.

18 D. Topic 30(c) is a broader version of Topic 15 and seeks testimony about MedImmune's
19 agreements with any third party re the sales, marketing and distribution of Synagis. To the
20 extent this topic seeks information about MedImmune's relationship with Abbott,
21 MedImmune's motion is denied. The motion is otherwise granted because PDL has not
22 demonstrated why it should be permitted to conduct a probing examination as to any other third
23 party.

24 E. Topic 33 seeks testimony about MedImmune's license agreements with any third parties
25 relating to humanized antibody products and methods. The claimed relevance of this discovery
26 is very attenuated and the likely benefit of the testimony is outweighed by the associated burden
27 and expense. MedImmune's motion as to this topic is granted.

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1 F. Topic 34 seeks testimony about the identity of alternatives to MedImmune's humanized
2 antibodies Synagis or motavizumab. The record presented indicates that MedImmune has
3 already provided a Fed. R. Civ. P. 30(b)(6) witness who testified about this matter. (See
4 Berniker Reply Decl., Ex. 3 at 106:12-107:18, 113:6-16). MedImmune's motion as to this topic
5 is granted.

6 G. Topics 35 and 36 seek testimony about MedImmune's statements to the U.S. Patent and
7 Trademark Office ("PTO") and MedImmune's responses to PTO office actions re
8 MedImmune's patents and patent applications. PDL has already obtained documents
9 containing MedImmune's statements to the PTO re the Queen patents and various references. It
10 has now identified some 2000 pages of those documents containing statements that they would
11 like to ask about in deposition. It is not clear exactly what those statements are, and this court is
12 working in somewhat of a vacuum here. Nevertheless, on the record presented, PDL has not
13 managed to persuade that the likely benefit of this discovery outweighs the associated burden
14 and expense. Accordingly, MedImmune's motion as to these topics is granted.

15 SO ORDERED.

16 Dated: June 10, 2010

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18 HOWARD R. MCCOY, JR.
UNITED STATES MAGISTRATE JUDGE

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United States District Court

For the Northern District of California

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